

REMARKS

Applicant respectfully requests reconsideration. Claims 30-41, 55 and 57-79 were previously pending in this application. Claims 37, 70 and 75 have been amended. Claims 55, 57-69 and 75-79 are presently withdrawn. The withdrawn claims are drawn to methods of using the micro-organism of claims 30-41 and 70-74, and therefore Applicant wishes to keep the claims in the application for rejoinder as provided in MPEP 821.04. As a result, claims 30-41 and 70-74 presently are pending for examination.

The specification has been amended to provide sequence identifiers for the sequences depicted in Figs. 1 and 2. In addition, the Abstract has been amended to replace the use of the word "said" that the Examiner found to be objectionable.

No new matter has been added by the amendments to the claims or specification.

Entity Status

Applicant is a large entity for this application, as was indicated upon filing. The previous amendment was filed with an erroneous claim to small entity status, without deceptive intent. Applicant, therefore, is filing herewith a payment to make up the difference between the small entity fees paid with the previous amendment and the large entity fees that should have been paid.

The following amounts are included in the payment filed herewith: \$550 for the difference in small and large entity claims fees and \$180 for the difference in small and large entity multiple dependent claims fees.

In addition, Applicant has paid for a one month extension of time for the present response, in the amount of \$120.

Objections to the Specification

1. The Examiner objected to the abstract of the disclosure because it contains legal phraseology.

Applicant has amended the abstract by submitting a replacement abstract herewith. The objectionable word “said” has been removed and replaced with the word “the”.

Accordingly, withdrawal of this objection is respectfully requested.

2. The Examiner objected to the specification because sequence identifiers for the nucleotide sequences in Figure 1 and Figure 2 of the instant specification were not provided.

Applicant has amended the Brief Description of the Drawings to provide the sequence identifiers.

Accordingly, withdrawal of this objection is respectfully requested.

Rejections Under 35 U.S.C. § 112

The Examiner rejected claims 37-38 and 70-74 under 35 U.S.C. §112 , second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter.

Specifically, the Examiner objected to the use of the term “derived from” an suggested the use of the term “obtained from” to imply a more direct method of obtaining the DNA sequence.

Applicant has amended claims 37 and 70 as suggested (and also claim 75, now withdrawn, which contained the same term). Applicant does wish to note for the record that obtaining a sequence from *C. elegans* or a pest encompasses a variety of methods well known in the art, including physically obtaining the sequence from an organism(s) and synthesizing the sequence based on, for example, sequence information provided in a database of nucleic acid sequences from the organism(s).

Accordingly, withdrawal of the rejection of claims 37-38 and 70-74 under 35 U.S.C. §112 is respectfully requested.

Rejections Under 35 U.S.C. § 102

1. The Examiner rejected claims 30, 32-34, 37-41 and 70-74 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,679,551 (Alderete).

Applicant has amended claims 37 and 70 to remove the term “derived from” and to recite that the DNA sequence is “obtained from” the organism recited in the claims. The DNA sequence described in the ‘551 patent (s1 or s1’) is not a DNA sequence that is obtained from *C. elegans* or a pest. Therefore, the claims are not anticipated by the ‘551 patent.

Accordingly, withdrawal of this rejection is respectfully requested.

2. The Examiner rejected claims 30-41 and 70-74 under 35 U.S.C. § 102(b) as being anticipated by Timmons et al. (East Coast Worm Meeting Abstract 180, May 12, 1998) as evidenced by Timmons et al. (Nature 395:854, 1998).

Applicant asserts that there is no evident connection between what is disclosed in the Timmons et al. Abstract and Timmons et al. article. There is nothing in either the Timmons et al. abstract or the Timmons et al. article to suggest that the methods and materials used in the

abstract are the same as those described in the article. The Examiner has made this assumption, but it is unwarranted and insufficient to sustain an anticipation rejection of the claims.

Moreover, the Examiner's allegation that "the claimed and prior art products are identical or substantially identical" does not relieve the Examiner of demonstrating where each of the elements of Applicant's claimed invention can be found in the prior art, specifically in the Timmons et al.abstract. This has not been done. Thus the burden has not been shifted to Applicant to prove that the Timmons et al.abstract does not contain a description of the claimed invention.

Accordingly, withdrawal of this rejection is respectfully requested.

3. The Examiner rejected claims 30, 32-39 and 70-74 under 35 U.S.C. § 102(e) as being anticipated by the Fire et al. patent, U.S. Patent No. 6,506,559 B1.

The Fire et al. patent claims a priority date of December 23, 1997 based on US provisional application serial number 60/068,562. However, the specification of this provisional application does not recite all of the elements of Applicant's claimed invention.

In the priority document of the Fire patent, the cited passage on in vivo or in vitro production of dsRNA was intended for demonstrating how dsRNA could be produced and that throughout the priority document it is evident that the "fate" of the dsRNA is for "injection" in *C. elegans*.

There is nothing in the Fire provisional application, however, that provides the claimed micro-organism comprising an expression vector comprising a promoter or promoters oriented relative to a DNA sequence such that the promoter or promoters initiate transcription of said DNA sequence to double stranded RNA upon binding of a transcription factor to said promoter or promoters. As a result, the Fire provisional application does not teach each and every element of the claimed invention, and therefore does not anticipate the claimed invention.

Accordingly, withdrawal of this rejection is respectfully requested.

CONCLUSION

A Notice of Allowance is respectfully requested. The Examiner is requested to call the undersigned at the telephone number listed below if this communication does not place the case in condition for allowance.

If this response is not considered timely filed and if a request for an extension of time is otherwise absent, Applicant hereby requests any necessary extension of time. If there is a fee occasioned by this response, including an extension fee, that is not covered by an enclosed check, please charge any deficiency to Deposit Account No. 23/2825.

Respectfully submitted,
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Docket No.: D0590.70011US02

Date: May 3, 2007

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